

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**



**Application No. 16454 of Richard W. Tynes, Jr.**, pursuant to 11 D.C.M.R. § 3108.1, for a special exception under Section 802 of the Zoning Regulations to continue use of a recycling processing facility in a C-M-1 District at premises 6130 North Capitol Street, N.W. (Parcels 135/237 and 135/238 near Square 3374).

**HEARING DATE:** April 21, 1999

**DECISION DATE:** June 2, 1999

**DECISION AND ORDER**

**PRELIMINARY AND PROCEDURAL MATTERS:**

The applicant, Richard W. Tynes, Jr., president of Eagle Maintenance Services, Inc., filed an application with the Board of Zoning Adjustment (Board) on February 12, 1999, pursuant to 11 D.C.M.R. § 3108.1 (1995)<sup>1</sup> for a special exception under 11 D.C.M.R. § 802.3 (1995), relating to intermediate materials recycling facilities, a permitted use in a C-M zoning district. Eagle Maintenance Service, Inc. (Eagle) currently operates a recycling processing facility at 6130 North Capitol Street, N.W., pursuant to a special exception granted by the Board on February 4, 1994, for a period of five years in Application No. 15887. The requested special exception will allow the continued operation of the Eagle facility.

By memoranda dated February 22, 1999, the Office of Zoning advised the Department of Consumer and Regulatory Affairs, the Department of Public Works, the Office of Planning, and Advisory Neighborhood Commission (ANC) 4B, (the ANC for the area within which the subject property is located) of Application No. 16454.

The Board scheduled a public hearing on the application for April 21, 1999. Pursuant to 11 D.C.M.R. § 3317.3, the Office of Zoning mailed the applicant, the owners of all property within 200 feet of the subject property, and ANC 4B notice of the hearing. Notice was also published in 46 D.C. Reg. 2366 (Mar. 5, 1999). Mr. Tynes' affidavit of

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<sup>1</sup> The Board's rules of practice and procedure were amended and renumbered effective October 31, 1999. The amendments do not affect this application. See 11 D.C.M.R. § 3102.2, 46 D.C. Reg. 7853 (Oct. 1, 1999). To conform to the citations used in the application, all citations to the Board's rules are to the rules as published in 11 D.C.M.R. ch. 31 and 33 (1995).

posting indicates that zoning posters were placed at the front of the property on April 5, 1999, in plain view of the public.

At the April 21, 1999, public hearing, the Board heard testimony from Mr. Tynes and his attorney, Vannie Taylor, III. There were no reports from ANC 4B or from any government agency. No persons testified in support of or in opposition to the application. At the request of Mr. Tynes, the Board kept the record open for ANC 4B's report. The Board subsequently received and reviewed the report, dated April 29, 1999, recommending approval of the special exception for a period of time longer than five years.

At its decision meeting on June 2, 1999, the Board, by a 4-0 vote, approved Mr. Tynes' application, subject to certain conditions, for a period of ten years.

**FINDINGS OF FACT:**

1. The premises that are the subject of this application, 6130 North Capitol St., N.W., are located in a C-M-1 zoning district.
2. On February 4, 1994, the Board granted the applicant, Richard W. Tynes, Jr., a special exception in Application No. 15887 (the 1994 order) under 11 D.C.M.R. §§ 802 and 3108.1 to permit for a period of five years the construction and operation of an intermediate materials recycling facility. The five-year period ended in February 1999, and Mr. Tynes has applied for a special exception to continue use of the premises as an intermediate materials recycling facility.
3. The Eagle facility is a fully enclosed structure, used to receive, separate, and process recyclable materials such as newspaper, glass, plastics, and aluminum and steel beverage containers. Eagle packages and ships these materials offsite for recycling.
4. The facility and all operations of the facility are located more than 200 feet from a residential property line.
5. There is no truck access or queuing to the site from residential streets. The facility is landscaped and decorated to integrate into the surrounding neighborhood. The Board has not received any complaints from the community regarding this facility. The Board finds that there is no evidence in the record of that the facility has had any adverse impacts on the neighborhood due to noise, traffic, parking, odor, or other objectionable conditions.

6. While the Board's 1994 order required that the facility be enclosed on all sides by a 10-foot fence, the applicant has constructed a 12-foot fence to screen and secure the site.
7. The site is maintained clean and free of litter and other debris.
8. All recyclable materials are stored inside the structure. The facility does not include the storage and processing of garbage, biodegradable materials, hazardous waste, or medical, hospital, or pharmaceutical waste. Eagle inspects every truck entering its site for unacceptable materials and waste before allowing the truck to offload.
9. The hours of operation are from 7:00 a.m. to 7:00 p.m., Monday through Saturday. On Saturday, Eagle does not accept recyclable materials and its operations are typically limited to maintenance and repair and load crib operations.
10. The Board finds that there is no evidence in the record of any violation of any environmental permit conditions.
11. Eagle has provided and maintained the landscaping required by the Board's 1994 order, and planted additional trees and shrubbery.
12. Eagle has complied with the condition of the Board's 1994 order limiting the number of employees on site at any one time to 25 employees.
13. The Board finds that the summary of evidence, findings of fact, and conclusions of law in its 1994 order remain relevant. The 1994 order is incorporated herein by reference.
14. The Board finds that the applicant has complied with, and continues to comply with, the conditions the Board required in its 1994 order. The Board also finds that there is no evidence in the record of any adverse impacts on adjacent or nearby properties resulting from the operation of the Eagle facility, as conditioned by the Board's 1994 order.

#### **CONCLUSIONS OF LAW AND OPINION:**

The Board is authorized under the Zoning Act of 1938, 52 Stat. 797, as amended, D.C. Code § 5-424(g)(2) (1994 repl.), to grant special exceptions as provided in the Zoning Regulations. Richard W. Tynes, Jr., the president of Eagle Maintenance Services, Inc., applied under 11 D.C.M.R. § 3108.1 on behalf of Eagle for a special exception under 11 D.C.M.R. § 802 for an intermediate materials recycling facility in a C-M District. The

notice requirements of 11 D.C.M.R. § 3317 for the public hearing on the application have been met.

To meet his burden of proof under Subsection 3108.1, the applicant must demonstrate that the Eagle recycling processing facility is in harmony with the general purpose and intent of the Zoning Regulations and Maps; that it will not adversely affect the use of the neighboring property in accordance with the Zoning Regulations and Maps; and that it meets the special conditions for intermediate materials recycling facilities that are listed in 11 D.C.M.R. § 802.3 and that are designed to protect the character of the neighborhood and adjacent and nearby properties from adverse effects associated with intermediate materials recycling facilities. The provisions of 11 D.C.M.R. § 802.3 are set forth in paragraph 6 on pages 2 through 3 of the Board's 1994 order and will not be repeated here.

The Zoning Regulations define an "intermediate materials recycling facility" in 11 D.C.M.R. § 199.1 (1995) as

a fully enclosed structure used for the receipt, separation, storage, conversion, baling, and processing of paper, metal, glass, plastics, tires, bulk waste, and other non-biodegradable recyclable materials for the purpose of reutilization of the materials. The facility shall not include storage or processing of biodegradable materials, construction and demolition debris, white goods, and hazardous substances, as defined in D.C. Law 8-36, Environmental Policy Act of 1989, and the rules and regulations under the Act. The facility shall be limited in operation to baling, briquetting, crushing, compacting, grinding, shredding, and sorting of acceptable materials.

The Board concludes that the Eagle facility, a fully enclosed structure used for the receipt, separation, and baling of recyclable materials, is an intermediate materials recycling facility as defined in the Zoning Regulations.

The Board concludes that the Eagle facility meets the requirements of 11 D.C.M.R. § 802.3 for the following reasons. First, as discussed in Finding of Fact No. 4, the facility meets the requirements of Subsection 802.3(a) as to required separation distance from residential property, as no part of the Eagle facility or its operations is located within 200 feet of a residential property line.

Second, as discussed in Finding of Fact No. 5, the Eagle facility meets the requirements of Subsection 802.3(b), which seeks to protect the character of the neighborhood from any unacceptable adverse impacts due to noise, traffic, parking, odor, or other objectionable conditions. The Board found no evidence of any unacceptable adverse impacts. The applicant has constructed, maintained, and operated the facility in compliance with the Board's 1994 order. The continued operation of the facility in the

same manner and subject to the same conditions will prevent unacceptable adverse impacts on the neighborhood.

Third, as discussed in Finding of Fact Nos. 6 and 12, the applicant has met the requirements of Subsection 802.3(c) as to fencing, security, and landscaping by installing a 12-foot fence and gates and by providing landscaping, including trees and shrubbery.

Fourth, the facility, which is maintained free of litter, trash, and debris, as discussed in Finding of Fact No. 7, meets the requirements of Subsection 802.3(d).

Fifth, as provided in Findings of Fact Nos. 5, 13, and 14, the facility meets the parking and queuing requirements of Subsection 802.3(e). There is no truck access or queuing to the site from residential streets. In addition, the number and timing of truck trips to the site and the number of employees permitted on site at any one time are limited by the conditions of this order.

Sixth, based on Finding of Fact No. 8, the Board concludes that the requirements of Subsection 802.3(f) are met, in that there all recyclable materials are stored indoors and there is no evidence of noncompliance with storage requirements.

Seventh, based on Finding of Fact No. 9, the Board concludes that the requirements of Subsection 802.3(g) relating to hours of operation are met, as the facility operates from 7:00 a.m. to 7:00 p.m., Monday through Saturday.

Eighth, based on Finding of Fact No. 11, the Board concludes that the requirements of Subsection 802.3(h) are met, as there is no evidence in the record of any violation of environmental permit requirements established by the District of Columbia.

Finally, based on Findings of Fact Nos. 13–15, the Board concludes that the conditions imposed in the Board's 1994 order have served to protect adjacent and nearby property, as provided for in Subsection 802.3(i), and should be continued.

The Board concludes that the Eagle facility, which has been constructed, maintained, and operated in compliance with the Zoning Regulations and the Board's 1994 order, is in harmony with the general purposes and intent of the Zoning Regulations and Map. Based on the applicant's testimony regarding the manner in which he operates and maintains the facility, the affected ANC's favorable report, and the lack of any opposition or adverse comments relating to the facility, the Board concludes that the requested special exception, as conditioned by the Board, will not adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

The ANC 4B's report strongly recommends approval of the application for a minimum of five years based on Eagle's satisfactory performance history and its business, educational, and environmental contributions to the community. The ANC recommended that the Board consider a period of approval longer than five years. In granting this

application for a period of ten years, the Board has afforded the ANC's recommendation the "great weight" to which it is entitled.

For the reasons stated above, the Board concludes that the applicant has met his burden of proof. It is hereby **ORDERED** that the application is **GRANTED**, subject to the following conditions:

1. This approval shall be for a period of **TEN YEARS (10)** or until the facility ceases operations or changes ownership, whichever occurs first.
2. The facility shall be constructed in accordance with the plans marked as Exhibit No. 37 of the record in Application No. 15887.
3. The applicant shall screen the facility with a ten-foot high chain link fence with slats generally as shown on the plans marked as Exhibit No. 37 of the record in Application No. 15887. The portion of the ten-foot fence that fronts along Chillum Road must include no fewer than six brick pilasters, two of which must be located on either side of the gate and the two corner pilasters on each end must reveal a return. The applicant shall maintain the fence in good repair at all times.
4. The applicant shall landscape the property as shown on the plans marked as Exhibit No. 37 of the record in Application No. 15887. The height of the foster holly trees must be between seven and eight feet in height at planting. The applicant shall maintain the landscaping around the existing administration office and storage facility, as well as the landscaping of the addition, in a neat and healthy growing condition.
5. There shall be no processing of hazardous materials at the site, including medical, hospital, or pharmaceutical waste.
6. There shall be no storage of recyclable or residue materials on the exterior of the structure at any time. The applicant shall maintain the site and immediately adjacent public space free of refuse and debris at all times.
7. The number of employees, including administrative personnel, shall not exceed 25 at any one time.
8. The facility shall be administered by on-site personnel during all hours of operation.

9. The number of truck trips delivering materials to the site shall not exceed 40 per day. The number of trucks removing residue material from the site shall not exceed ten per month.
10. The hours of operation of the facility shall be between 7:00 a.m. and 7:00 p.m., Monday through Saturday. All truck arrivals and departures shall occur during the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday.

**VOTE: 4-0** (Sheila Cross Reid, Betty King, Jerry H. Gilreath, and Anthony J. Hood (by absentee vote) to grant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

Each concurring member has approved the issuance of this Decision and Order and authorized the undersigned to execute this Decision and Order on his or her behalf.

ATTESTED BY:

  
JERRILY R. KRESS, FAIA  
Director, Office of Zoning

FINAL DATE OF ORDER: MAR 21 2000

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 D.C.M.R. 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT OF THE DISTRICT OF COLUMBIA."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



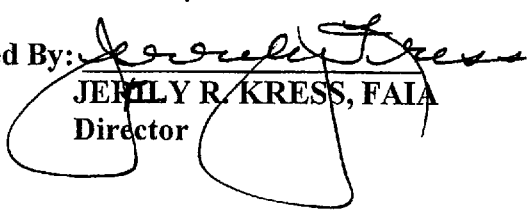
**BZA APPLICATION NO. 16454**

As Director of the Office of Zoning, I certify and attest that on  
MAR 21 2000 copy of the decision entered on that date in this  
matter was mailed first class, postage prepaid to each party in this case, and who  
is listed below:

Richard W. Tynes, Jr.  
6130 North Capitol Street, N.W.  
Washington, D.C. 20011

The Chairperson  
Advisory Neighborhood Commission 4B  
4<sup>th</sup> District Police Headquarters  
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Washington, D.C. 20012

Michael Johnson, Zoning Administrator  
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941 North Capitol Street, N.E.  
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Attested By:   
JENTILY R. KRESS, FAIA  
Director

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